

11 U.S.C. § 726(a) and (b)
Administrative expense
Converted case

In re Agritherm Products 695-60908-fra7
2/7/97 FRA Unpublished

The trustee filed an objection to a claim filed by Fortier Properties, the debtor's landlord, for unpaid rent. The debtor filed its petition for relief under Chapter 11 on March 16, 1995 and Fortier filed a proof of claim for a general unsecured claim of \$13,909. The case was converted to Chapter 7 on September 7, 1995. The trustee was able to liquidate the debtor's assets by October 31, 1995 and by mid-November, 1995 the assets had been removed and Fortier was in possession of the property. On October 26, 1996, Fortier filed a proof of claim amending its previous proof of claim, asserting a priority claim for \$6,300 for unpaid rent for the months of August, September, October, and ½ November, 1995. The trustee objected to the amended claim to the extent of the priority claim on the ground that it constituted a new claim which was not filed timely.

The court determined that the \$6,300 in unpaid rent constituted a priority administrative expense under 11 U.S.C. § 507. 11 U.S.C. § 726(a) requires distribution first to claims of the kind specified in § 507, proof of which is filed either timely or tardily if filed before the date on which the trustee commences distribution. Thus, since the claim for priority rent was filed before the distribution date, the date it was filed is not relevant. However, 11 U.S.C. § 726(b) requires the trustee to distribute funds in a converted case first to administrative expense claims in the Chapter 7 case before paying pre-conversion administrative expense claims. Thus, the \$6,300 had to be allocated between pre-conversion and post-conversion periods with that amount allocated to the Chapter 7 period paid pro rata with other Chapter 7 administrative expenses.

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8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF OREGON

10 IN RE)
11 AGRITHERM PRODUCTS, INC.,) Case No. 695-60908-fra7
12 _____ Debtor.) MEMORANDUM OPINION

13 Trustee objects to a claim filed by Fortier Properties
14 ("Claimant") for unpaid rent and cleanup expenses.

15 I. FACTS

16 The Claimant was Debtor's landlord. Debtor filed its
17 petition for relief under chapter 11 of the Bankruptcy code on
18 March 16, 1995. The deadline for filing proofs of claim was July
19 20, 1995. On that date Claimant filed a proof of claim for
20 \$13,309.00, characterizing the debt as "unsecured, nonpriority."
21 The claim was broken down as follows:

Unpaid rent (five month's @ 1800)	\$9,000
Late payment penalties	2,500
Straw removal and cleanup, fence repairs	2,500
Attorneys fees, etc.	<u>364</u>
Total	\$13,909

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MEMORANDUM OPINION-2

1 The case converted to Chapter 7 on September 7, 1995. On
2 September 27 Claimant's attorney wrote to the trustee stating
3 that Claimant has incurred "additional expenses" of \$2,592 to
4 remove from the premises a large quantity of straw debtor had
5 stored on the premises for "more than two years." The letter was
6 eventually forwarded by the trustee to the court, for filing as
7 an "informal" proof of claim.

8 Claimant filed a motion for relief from the automatic stay
9 on August 3, 1995, seeking leave to foreclose its landlord's lien
10 on assets of the estate. The motion was heard at the same time
11 as a motion to convert the case. Since the Court determined the
12 case should be converted, the motion for relief was denied,
13 without prejudice so that the Chapter 7 trustee would have an
14 opportunity to liquidate the assets in the event there was equity
15 for the estate.

16 The trustee was able to liquidate assets and the process was
17 completed by October 31, 1995. By mid November all assets had
18 been removed, and the Claimant was in sole possession of the
19 property. On October 26, 1996 Claimant filed a proof of claim
20 amending the July 19, 1995 claim. In addition to the \$13,909
21 originally demanded, the amended proof of claim asserted a
22 priority claim for \$6,300 for "rent for the months during which
23 the property was under the administration of the court", broken
24 down as \$1,800 per month for August, September, and October, and
25 \$900 for November. At oral argument it was made clear that the
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1 year in question was 1995, and that the claim referred to rent
2 accruing after the case was converted.

3 II. DISCUSSION

4 Administrative Expense Priority

5 Rent accruing while a Chapter 7 trustee or a Debtor-in-
6 Possession remains in possession of property may be claimed as a
7 priority administrative expense. Code §§503(b), 507(a)(1). The
8 trustee objects to that portion of the amended claim seeking
9 payment of the priority claim, alleging that it is a new claim
10 that does not date back to the original filing, and is therefore
11 untimely.

12 Code §726(a) requires distribution of property of the estate
13 "(1) first, in payment of claims of the kind specified in, and in
14 the order specified in, section 507 of this title, proof of which
15 is timely filed under section 501 of this title or tardily filed
16 before the date on which the trustee commences distribution
17 under this section...." The claim for rent accruing during the
18 pendency of the bankruptcy case, both before and after conversion
19 to Chapter 7, is allowable under §507: it follows that it does
20 not matter if the claim is "tardy."

21 The trustee asserts that he had vacated the property by
22 October 31, and that the estate should not be responsible for the
23 \$900 in rent for November. The liquidator's report indicates
24 that the personal property on the site was sold on October 26th.
25 Claimant claims that it took two weeks for all the purchasers to
26 remove their property, which claim the Trustee does not dispute.

1 Under the circumstances, the claim for November should be
2 allowed.

3 Cleanup costs

4 The claim for removing the hay stored at the site appears
5 twice; once in the original proof of claim, and again in the
6 September 27, 1995 letter to the trustee. It appears to me that
7 these claims are one and the same. If the expenses claimed in
8 the letter were for a second cleanup, the amended proof of claim
9 filed in October 1996 would have shown a higher amount. The
10 claim is allowed, but bears no priority.

11 Priority of Distribution

12 Even though the rent claimed for the property while the
13 debtor-in-possession and the trustee were in possession of the
14 property is accorded an administrative priority under § 507(a), §
15 726(b) directs the trustee to distribute property of the estate
16 first to administrative expense claims incurred in the converted
17 case. Pre-conversion administrative expense claims are paid only
18 if there are additional funds available after payment of the
19 post-conversion administrative expense claims. Consequently, the
20 claim for rent for the post-conversion period (\$1,380 for
21 September, \$1,800 for October, and \$900 for November) totaling
22 \$4,080 shall be paid pro-rata with other Chapter 7 administrative
23 expense claims. The remaining allowable claim of the Claimant
24 shall be paid only if additional funds remain for such payment
25 and in the order of priority accorded such claim.

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